

1 *Rawlinson*, 433 U.S. 321, 334 (1977). Title VII “limits the situations in which discrimination is
2 permissible to ‘certain instances’ where sex discrimination is ‘reasonably necessary’ to the ‘normal
3 operation’ of the ‘particular’ business.” *Johnson Controls*, 499 U.S. at 201. “Each one of these
4 terms...prevents the use of general subjective standards and favors an objective, verifiable
5 requirement.” *Id.* “But the most telling term is ‘occupational’; this indicates that these objective,
6 verifiable requirements must concern job-related skills and aptitudes.” *Id.* “By modifying
7 ‘qualification’ with ‘occupational,’ Congress narrowed the term to qualifications that affect an
8 employee’s ability to do the job.” *Id.*

10 To escape summary judgment on a BFOQ defense, the employer must raise a genuine issue
11 whether (1) its facially discriminatory policy is reasonably necessary to the normal operation of its
12 particular business, and (2) the policy concerns job-related skills and aptitudes. *Frank v. United*
13 *Airlines, Inc.*, 216 F.3d 845, 855 (9th Cir. 2000). The “employer must show ‘a high correlation’
14 between a qualification and ability to perform job functions.” *EEOC v. Kamehameha*
15 *Schools/Bishop Estate*, 990 F.2d 458, 466 (9th Cir. 1993) (quoting *Johnson Controls*, 499 U.S. at
16 202). Defendant cannot meet that burden here.

18 Similar to the Title VII BFOQ defense, the WLAD BFOQ applies “narrowly to jobs for
19 which a particular quality of protected status will be essential to or will contribute to the
20 accomplishment of the purposes of the job.” WAC 162-16-240. To establish a BFOQ under
21 Washington law, the employer must show that “excluding members of a particular protected status
22 group is essential to the purposes of the job.” *Hegwine v. Longview Fibre Co.*, 162 Wn.2d 340, 358,
23 172 P.3d 688 (2007) (internal quotation marks omitted). Furthermore, the employer must “establish
24 that all or substantially all persons in the excluded class would be unable to efficiently perform the
25 duties of the position at issue, and the essence of the operation would be undermined by hiring
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